

LISA BERNASEK)	
Claimant)	
VS.)	
)	
CAMBRIDGE PLACE)	Docket No. 217,109
Respondent)	
)	
AND)	
)	
KANSAS HEALTH CARE ASSOCIATION)	
Insurance Carrier)	

The Administrative Law Judge granted claimant's request for temporary total disability and medical benefits but denied any payment of past medical expenses. The Administrative Law Judge found claimant suffered a work-related injury and gave

respondent the required notice of accident within 10 days. Claimant alleges she was injured while employed by the respondent on May 3, 1996. Claimant also claims she notified the respondent of the accident on that day. On the other hand, respondent argues claimant failed to give respondent notice of the accident within 10 days thereof, as required by K.S.A. 44-520.

Claimant alleges she injured her right knee while transferring a patient, with the assistance of another employee, from the patient's bed to a chair. Claimant claims the accident occurred at approximately 5:00 p.m. on May 3, 1996. Claimant testified she was able to finish her shift. Furthermore, claimant testified she notified the Director of Nursing, Jackie Heikes, of the accident on the day of the accident. Claimant testified Ms. Heikes told her to see a physician and she would then complete an incident report. At the time of claimant's injury, she was living with her mother. Claimant testified she told her mother about the accident. Her mother also testified at the preliminary hearing and indicated she was in contact with Ms. Heikes anywhere from three to four times after claimant's injury in order to inform Ms. Heikes of how claimant was progressing following the accident.

Claimant was first treated by a local physician and then she was referred to David E. Thurston, M.D., an orthopedic surgeon in Topeka, Kansas. Dr. Thurston performed arthroscopy surgery to repair claimant's injured right knee on August 16, 1996. The doctor released claimant to return to work on October 14, 1996. At the time of the preliminary hearing, claimant had not returned to work for the respondent.

Respondent presented the testimony of Jackie Heikes by deposition on March 27, 1996. Ms. Heikes testified claimant did not tell her that she had a work-related accident until sometime in August 1996. At that time, Ms. Heikes testified claimant called and asked if she remembered claimant telling her that claimant had an accident at work. Ms. Heikes further testified that claimant left her employment with respondent in May 1996 but the reason claimant left was for personal health problems and not a work-related injury. Ms. Heikes was no longer employed by the respondent at the time of her deposition testimony.

In order to answer the question of whether claimant gave respondent the required notice of accident within 10 days, the trier of fact has to decide whether claimant or Jackie Heikes presented truthful testimony. Claimant testified before the Administrative Law Judge and Jackie Heikes testified by deposition. In this instance, the Administrative Law Judge made the decision that claimant was a truthful witness when he found claimant gave timely notice of accident to respondent. Therefore, since the Administrative Law Judge had the opportunity to observe the claimant in person and assess her credibility, the Appeals Board finds some deference should be given to his conclusions. Accordingly, the Appeals Board finds the Administrative Law Judge's conclusion that claimant gave timely notice to the respondent within 10 days of her accident should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order for Compensation entered by Administrative Law Judge Bryce D. Benedict on April 9, 1997, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of June 1997.

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
Kip A. Kubin, Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director